

# **EXHIBIT 5**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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4 RISEANDSHINE CORPORATION

5 d/b/a RISE BREWING,

6

7 Plaintiff,

8

9 No. 1:21-cv-06324 (LGS)

10 vs.

11

12 PEPSICO, INC.,

13

14 Defendant.

15 -----x

16 \*\*\*HIGHLY CONFIDENTIAL\*\*\*

17 \*\*\*OUTSIDE ATTORNEYS' EYES ONLY\*\*\*

18 REMOTE VIDEO-RECORDED DEPOSITION OF

19 HUDSON CALDER GAINES-ROSS

20

21 April 29, 2022

22

23 Stenographically Reported By:

24 Mark Richman, CSR, CCR, RPR, CM

25 Job No. 208625

<p style="text-align: right;">Page 238</p> <p>1 name RISE come from? Did I read that 2 correctly? 3 A. Yes. 4 Q. Okay. And it says (Reading:) We 5 had so many names. In fact, we have an 6 old photo of Jarrett and me holding a 7 whiteboard of all the names we were 8 contemplating. RISE just feels good, 9 you know? It's strong, to the point, it 10 feels like a brand you want to grab off 11 the shelves or out of your fridge those 12 early mornings before work and late 13 nights with friends. 14 Did I read that correctly? 15 A. Yes. 16 Q. Do you have any reason to dispute 17 that those are your sentiment or your 18 words, Mr. Gaines-Ross? 19 A. No, I don't dispute the document. 20 However, I don't remember giving this 21 interview so -- 22 Q. Understood. 23 A. I can't say with confidence that 24 I wrote this. You know, sometimes when 25 you have a company, you have like a PR</p>	<p style="text-align: right;">Page 239</p> <p>1 team or someone, a marketing person 2 writing these on your behalf. So -- 3 Q. Mm-hmm. 4 A. I just want to clarify that I 5 don't remember giving this. But for 6 conversation purposes, I'm happy to say 7 this is me. 8 Q. Understood. And you would agree, 9 sir, that the term "rise" is a brand you 10 want to grab off the shelves or out of 11 your fridge those early mornings before 12 work and late night with friends, you 13 agree with that statement, right? 14 A. Well, I think -- 15 MR. TANCK: Objection to form. 16 A. I think people can do that. I 17 think that's great. But I think RISE 18 has become much more than that. And I 19 also think that people drink RISE for 20 their own reasons. 21 Q. Understood. 22 MS. ESFANDIARIFARD: And we can 23 take that down, Ms. Beltran. 24 Q. By the time that you all came up 25 with the brand for RISE Brewing Company</p>
<p style="text-align: right;">Page 240</p> <p>1 which is sometime after early 2015, you 2 would agree with me that you had 3 knowledge of another coffee company 4 utilizing the name "Rise"; is that fair? 5 MR. TANCK: Object to form, 6 vague. 7 A. No. 8 Q. That's not fair? 9 A. Yeah, I don't, I don't remember 10 another coffee company using it. 11 Q. You're not -- you don't remember 12 sitting here today another coffee 13 company that used the term "rise" in 14 their name when you all came up with the 15 name for your company sometime from 2015 16 onward, right? 17 A. No. And I think we chose that 18 name for that reason. 19 Q. Gotcha, gotcha, okay. 20 You're aware of -- let me see 21 here -- RISE Coffee Roasters, fair? 22 A. No. 23 Q. Okay. Let's see if this will jog 24 your memory. So we discussed earlier 25 today that you created an Instagram</p>	<p style="text-align: right;">Page 241</p> <p>1 account called WHAT I'M HOLDING, right? 2 A. Yes. 3 MS. ESFANDIARIFARD: And let's 4 bring up Tab 40A if we can, 5 Ms. Beltran. 6 (Exhibit 10, a screenshot of the 7 account WHAT I'M HOLDING was marked 8 for identification.) 9 Q. Okay. And Ms. Beltran is sharing 10 a screenshot of the account WHAT I'M 11 HOLDING. Is that accurate, we're 12 talking about the Instagram that you 13 created? 14 A. Yes. 15 Q. Okay. And am I right, sir, that 16 you personally post on this Instagram 17 account, right? 18 A. No. I had someone else actually, 19 her name is Lea, post these photos. 20 Q. Gotcha. At what point -- were 21 you at any point posting on WHAT I'M 22 HOLDING? 23 A. Yeah, we shared. 24 Q. Okay. At what point did -- was 25 there any point in the beginning days in</p>

<p style="text-align: right;">Page 242</p> <p>1 which only you were posting on WHAT I'M</p> <p>2 HOLDING?</p> <p>3 MR. TANCK: Object to form,</p> <p>4 vague.</p> <p>5 A. I, I don't remember. We were</p> <p>6 doing it pretty -- we were sharing.</p> <p>7 But, yeah, I don't remember specifically</p> <p>8 how we divvied up.</p> <p>9 Q. Okay. Do you recall when -- and</p> <p>10 what is Lea's last name for the record?</p> <p>11 A. I think it's Rosenbaum.</p> <p>12 Q. Okay. Do you recall when</p> <p>13 Ms. Rosenbaum start -- Ms. Rosenbaum</p> <p>14 started to use the Instagram account</p> <p>15 WHAT I'M HOLDING with you?</p> <p>16 A. No.</p> <p>17 Q. Okay. Do you recall what year?</p> <p>18 Can you pinpoint it in any way?</p> <p>19 A. No.</p> <p>20 Q. Okay. So sitting here today,</p> <p>21 it's your testimony, sir, that you have</p> <p>22 no recollection whatsoever as to when</p> <p>23 Ms. Rosenbaum started using the WHAT I'M</p> <p>24 HOLDING Instagram account; is that</p> <p>25 right?</p>	<p style="text-align: right;">Page 243</p> <p>1 A. That's right.</p> <p>2 Q. Okay.</p> <p>3 A. We both had the same log in, so.</p> <p>4 Q. Gotcha.</p> <p>5 MS. ESFANDIARIFARD: And if we</p> <p>6 pull up Tab 40 which we'll -- I'm</p> <p>7 sorry. So Tab 40A will be Exhibit 10</p> <p>8 and Tab 40 will be Exhibit 11.</p> <p>9 (Exhibit 11, post from WHAT I'M</p> <p>10 HOLDING dated October 2nd, 2014 was</p> <p>11 marked for identification.)</p> <p>12 MR. TANCK: I'm going to object</p> <p>13 to the documents for the record.</p> <p>14 MS. ESFANDIARIFARD: I'll address</p> <p>15 that in a second, Mr. Tanck.</p> <p>16 Q. Mr. Gaines-Ross, I'm displaying a</p> <p>17 post from WHAT I'M HOLDING and it's</p> <p>18 dated October 2nd, 2014; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have any reason to doubt</p> <p>21 that this is a true and accurate post</p> <p>22 from the Instagram which you were --</p> <p>23 belongs to you and is on your LinkedIn</p> <p>24 called WHAT I'M HOLDING?</p> <p>25 A. I don't, I don't remember this</p>
<p style="text-align: right;">Page 244</p> <p>1 photo.</p> <p>2 Q. Understood.</p> <p>3 A. But, I mean, I don't think you</p> <p>4 would make a fake version of it. So</p> <p>5 this looks accurate.</p> <p>6 Q. I appreciate that, sir.</p> <p>7 MS. ESFANDIARIFARD: And for the</p> <p>8 record, this is pictured in the</p> <p>9 Instagram is a, what appears to be a</p> <p>10 bag of coffee beans or coffee,</p> <p>11 perhaps the beans have been ground,</p> <p>12 I'm not sure, and it's titled Rise Up</p> <p>13 Roasters House Roast.</p> <p>14 Q. Is that correct?</p> <p>15 A. I believe, yeah, Rise Up. I'm</p> <p>16 not sure how they would pronounce it,</p> <p>17 but yeah.</p> <p>18 Q. Okay.</p> <p>19 A. Looks like one word.</p> <p>20 Q. Okay. And the caption of the</p> <p>21 Instagram picture is (Reading:) This</p> <p>22 coffee does the job... daily. Energy,</p> <p>23 roasted flavor, and warmth rolled up</p> <p>24 into one. Keeps you moving like the</p> <p>25 good old energizer bunny! And then</p>	<p style="text-align: right;">Page 245</p> <p>1 there is an at or tagging of Rise Up</p> <p>2 Coffee and energizer; is that correct,</p> <p>3 sir?</p> <p>4 A. Yes.</p> <p>5 Q. And then there are several</p> <p>6 hashtags following that title. The</p> <p>7 first reads (Reading:) Hashtag coffee,</p> <p>8 the second reads hashtag beans, the</p> <p>9 third reads hashtag roasted, the fourth</p> <p>10 reads hashtag fair trade, the fifth</p> <p>11 reads hashtag organic, and the sixth</p> <p>12 reads VSOPM and the final reads hashtag</p> <p>13 WHAT I'M HOLDING with a palm emoji.</p> <p>14 Did I read those all correctly,</p> <p>15 sir?</p> <p>16 A. Yes.</p> <p>17 Q. And this image was posted of Rise</p> <p>18 Up Coffee Roasters in October 2 of 2014,</p> <p>19 before you and your co-founders came up</p> <p>20 with the brand for RISE Brewing Company</p> <p>21 in 2015 onward, correct?</p> <p>22 MR. TANCK: So hold on. I'm</p> <p>23 going to object to lacks foundation,</p> <p>24 authenticity and also</p> <p>25 mischaracterizes the witness' prior</p>

<p style="text-align: right;">Page 310</p> <p>1 somewhere between four to seven  2 individuals from Pepsi?  3 MR. TANCK: Objection to form.  4 A. That sounds right. It's within  5 that range.  6 Q. Understood. Did you ever sign a  7 nondisclosure agreement or NDA with  8 PepsiCo in connection with this meeting?  9 A. I don't recall.  10 Q. To the best of your recollection,  11 did you ever sign an NDA or  12 nondisclosure agreement with PepsiCo  13 while working at RISE Brewing Company?  14 A. I don't recall. So long ago.  15 Q. Okay. So sitting here today you  16 just don't remember one way or another  17 if you've ever signed an NDA with  18 PepsiCo; is that correct?  19 A. No.  20 Q. That's not correct?  21 A. Sorry, that is correct.  22 Q. Okay. Have you signed numerous  23 NDAs over the course of your career?  24 A. Yes.  25 Q. Understood.</p>	<p style="text-align: right;">Page 311</p> <p>1 A. Many.  2 Q. Understood. You would agree with  3 me, sir, that in the companies you've  4 co-founded, including RISE Brewing  5 Company, one of your goals has been what  6 you refer to as an exit; is that fair?  7 MR. TANCK: Object to form.  8 A. My goal with every company I've  9 started is under the assumption to be  10 doing what I -- what I do when starting  11 that company for the rest of my life.  12 And if I can make money doing it and  13 keep on growing those revenues, then for  14 myself like salary-wise, then that's  15 great. That's what I want to do for the  16 rest of my life.  17 If I at times when I leave  18 because I decided to or whatever, you  19 know, the hope is that, yeah, sure,  20 there's some sort of exit down the road  21 if you have equity or stock. I don't  22 know how much I have in, in RISE. But a  23 potential route is to either keep on  24 doing it or to have an exit or you  25 close.</p>
<p style="text-align: right;">Page 312</p> <p>1 So it's kind of like three, it's  2 three options. So one, having an exit  3 is one of three options.  4 Q. What is your definition, sir, of  5 having an exit in the companies you've  6 co-founded?  7 A. Going public, merger,  8 acquisition.  9 Q. Would you agree with me that  10 while you were at RISE Brewing Company,  11 it would have been beneficial to have a  12 company like Pepsi acquire RISE Brewing  13 Company?  14 MR. TANCK: Objection, calls for  15 speculation.  16 A. While I was at RISE?  17 Q. Yes, sir.  18 A. I don't recall how I felt then.  19 I would defer to like what the financial  20 terms would be in that type of M&amp;A deal.  21 So I -- not every exit is a good thing.  22 Q. To your recollection, have you  23 ever described success at Plant People  24 or RISE Brewing Company as a situation  25 in which there was an exit?</p>	<p style="text-align: right;">Page 313</p> <p>1 MR. TANCK: Object to form.  2 A. I don't recall. But given that  3 there's three ways a company ends, which  4 is M&amp;A, do it for the rest of your life  5 or have an exit, I could see myself  6 saying something like that.  7 Q. And you could see yourself saying  8 something like that because you would  9 agree with that concept, right, sir?  10 MR. TANCK: Object to form,  11 vague.  12 A. It depends on what the terms are  13 of the exit for me to say if it's good  14 or bad.  15 Q. If the terms of the exit are  16 favorable, you would agree that you  17 could see yourself saying that because  18 you agree with that concept, right?  19 MR. TANCK: Objection to whatever  20 "that" is. I don't even know what  21 "that" is any more, but I object to  22 the question and vague.  23 A. Again, I can't say something is  24 generally favorable unless I know the  25 terms. So if you want to present like a</p>